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15 *Attorneys for Plaintiff Wells Fargo Bank, N.A.*

16 **UNITED STATES DISTRICT COURT**  
 17 **DISTRICT OF NEVADA**

18 WELLS FARGO BANK, N.A., a national  
 19 banking association;

20 Plaintiff,

21 vs.

22 SFR INVESTMENTS POOL 1, LLC, a  
 23 Nevada limited-liability company; FIESTA  
 24 DEL NORTE HOMEOWNERS  
 25 ASSOCIATION, a Nevada non-profit  
 26 corporation; ALESSI & KOENIG, LLC, a  
 27 Nevada limited-liability company;

28 Defendants.

Case No.: 2:15-cv-00800-GMN-CWH

**WELLS FARGO BANK, N.A.'S RULE 5.1  
 NOTICE OF CONSTITUTIONAL  
 QUESTION**

29 Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo"), by and through its attorneys, Snell &  
 30 Wilmer L.L.P., provides this Notice of Constitutional Question pursuant to Federal Rule of Civil  
 31 Procedure 5.1.

# **NOTICE OF CONSTITUTIONAL QUESTION**

Wells Fargo has challenged the constitutionality of Nevada Revised Statute 116.3116 *et seq.* (the “Statute”) as more fully set forth in the Complaint. Wells Fargo alleges that the Statute is unconstitutional for the following reasons:

## 1. The Statute Effects a Regulatory Taking without Just Compensation in Violation of the Fifth Amendment to the U.S. Constitution.

The Statute on its face effects a regulatory taking of Wells Fargo’s secured interest in the property located at 3616 Cantura Crest Court, North Las Vegas, Nevada 89031, APN 124-29-413-022 (the “Property”). The Fifth Amendment to the United States Constitution prohibits “private property be[ing] taken for public use without just compensation.” U.S. Const. amend. V.; *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 228-29 (1897). Permitting a homeowner’s association to transfer real property from a private owner to a third-party for a *de minimis* amount while extinguishing a lender’s first deed of trust on the property is a taking in violation of the U.S. Constitution.

**2. The Statute Fails To Require Actual Notice to Lenders in Violation of Constitutional Due Process Rights.**

The right to due process is secured by the Fifth and Fourteenth Amendments to the United States Constitution. Those due process provisions of the U.S. Constitution require that “at a minimum, [the] deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Here, the Statute does not require a homeowner’s association to provide notice to a lender before the homeowner’s foreclosure sale purportedly extinguishes the lender’s deed of trust. Because of the Statute’s failure to require notice to the lender whose property interest is at risk, the Statute violates the lender’s rights to due process as set forth in the U.S. Constitution.

## **CONCLUSION**

This Notice of Constitutional Question is made for the purposes outlined in Rule 5.1 of the Federal Rules of Civil Procedure. A copy of this Notice along with the Complaint on

1 file herein has been sent via certified mail to the Office of the Attorney General.

2 Dated: June 4, 2015.

3 SNELL & WILMER L.L.P.

4 By: /s/ Wayne Klomp

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## **CERTIFICATE OF SERVICE**

I hereby certify that on June 4, 2015, I electronically filed the foregoing with the Clerk of Court for the U.S. District Court, District of Nevada by using the Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that, pursuant to Rule 5.1 of the Federal Rules of Civil Procedure and the instructions of the Office of the Attorney General of Nevada, I have mailed the foregoing document by certified mail, postage fully prepaid, to the following:

Office of the Attorney General  
Attn: Gina Long  
555 E. Washington Ave.  
Suite 3900  
Las Vegas, NV 89101

DATED: June 4, 2015

/s/ Lara Taylor  
Lara Taylor, Employee of Snell & Wilmer L.L.P.

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